

On March 27, 1990 appellant, then a 45-year-old mail clerk, filed a traumatic injury claim alleging that on that date he sustained injuries to his back, neck, arms, shoulders, fingers and left leg when he was pulling and lifting sacks in his federal employment. By letter dated June 8, 1990, his claim was accepted for cervical and thoracic strains. Appellant was paid appropriate compensation and medical benefits.

On April 28, 1994 the Office proposed to terminate appellant's compensation for the reason that the disability resulting from the accepted injury had ceased. However, this proposed termination was never finalized.

On March 26, 2002 the Office referred appellant to Dr. H. Harlan Bleecker, a Board-certified orthopedic surgeon, for a second opinion. In a medical report dated April 25, 2003, he noted that appellant's L4-5 herniated disc syndrome appeared secondary to the 1990 work injury. Dr. Bleecker indicated that appellant was not able to perform the duties of a mail clerk, although he would be employable in some capacity. Based on Dr. Bleecker's opinion, the Office resumed compensation payments.

By letter dated March 3, 2003, the Office asked appellant to respond to various questions and to provide additional factual information.

In a medical report dated May 8, 2003, Dr. Jerome P. Helman, appellant's treating Board-certified internist, indicated that he remained totally disabled due to a herniated nucleus pulposus at L4-5 with neuropathy producing low back and lower extremity pain and paresthesia. By letter to Dr. Helman dated May 14, 2003, the Office requested that he submit further medical information to support appellant's claim of total disability. No timely response was received.

By letter dated May 19, 2003, the Office referred appellant to Dr. William Boeck, Jr., a Board-certified orthopedic surgeon, for a second opinion. In a report dated June 18, 2003, he diagnosed cervical strain, thoracic strain, lumbar strain superimposed on old lumbar discogenic disease L4-5 (status postoperative); status post left total knee replacement revision nonindustrial; and probable left shoulder rotator cuff syndrome, nonindustrial. He stated:

"The positive findings noted objectively in this examination are slight limitations of motion in the cervical and lumbar portions of the spine, some slight limitations of motion in the left shoulder, limited motion in the left knee with postoperative changes and increased warmth of the area."

* * *

"The objective residuals of the accepted [March 27, 1990] related cervical strain and thoracic strain consist of minimal to slight restrictions of motion in the cervical spine and no specific objective residuals in regard to the thoracic area. From the available medical records, these findings are not significant from the standpoint of residual difficulties regarding the cervical and thoracic portions of the back and would not, in my estimation, interfere with employment.

"I do not find that the left shoulder problem is related to the industrial injury. The lumbar problem is likely related to a flare-up of the previous lumbar difficulty for which he had surgery. I do not find that the lumbar complaints form a part of the initial symptomatology indicated by the reports at that time; therefore, I am unable to confirm any relationship of the present low back pain to the work injury of [March 27, 1990]."

Dr. Boeck opined that there was no specific need for any additional treatment regarding the cervical or thoracic sprain diagnoses.

On June 26, 2003 the Office issued a notice of proposed termination of compensation. The Office noted that the weight of the medical evidence rested with the opinion of Dr. Boeck, and recommended that appellant's medical and compensation benefits be terminated. Appellant did not file a timely response. In a July 31, 2003 decision, the Office terminated his compensation benefits.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. The Office may not terminate or modify compensation without establishing that the disabling condition ceased or that it was no longer related to the employment.¹ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.² Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.³ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁴

ANALYSIS

The Board finds that the weight of the medical opinion evidence rests with the opinion of Dr. Boeck. He opined that, based on his physical examination and review of the medical records, appellant's limited residual difficulties regarding the cervical and thoracic portions of the back would not interfere with his employment. Dr. Boeck noted that appellant did not require any additional medical treatment with regard to his accepted cervical and thoracic sprain diagnoses. In his June 18, 2003 medical report, Dr. Boeck discussed the history of the March 17, 1990 injury and appellant's current complaints. On physical examination, Dr. Boeck described appellant's measurements for ranges of motion of his head, neck and upper extremities. He noted only slight limitations in the cervical and lumbar spine with no restrictions of the thoracic spine. Dr. Boeck noted that the findings were not significant to interfere with appellant's return to work. His conclusion that appellant no longer had disability or required medical treatment resulting from his work-related injury is well supported in his medical report. On the contrary, Dr. Helman's very brief note only indicated that appellant remained totally disabled. He did not discuss the accepted injury or provide a rationalized explanation for his stated conclusion. Dr. Helman was provided with an opportunity to expand on his opinion, but

¹ *David W. Green*, 43 ECAB 883 (1992).

² *See Del K. Rykert*, 40 ECAB 284 (1988).

³ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁴ *Id.*

he did not do so. Accordingly, the Board finds that the weight of the medical evidence rests with the well-reasoned opinion of Dr. Boeck.⁵

CONCLUSION

The Office properly terminated appellant's compensation and medical benefits.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 31, 2003 is hereby affirmed.

Issued: September 10, 2004
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ Appellant submitted additional evidence which the Board may not review as it was not of record before the Office. See 20 C.F.R. § 501.2(c).